IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.2827 OF 1998

M/s.Godrej Soaps Ltd & Anr. ...Plaintiffs

Versus

M/s.J. Bekkers Company B.V. ...Defendants

Shri V.S.Amin for the Plaintiffs.

CORAM : ABHAY S.OKA, J.
DATED : JULY 31, 2007.

ORAL JUDGMENT:

1. The suit is kept under the caption of "Undefended Suits for Exparte Decree". The learned counsel for the Plaintiffs has tendered on record affidavit of evidence Mrs. Madhuri Madhav Bhole, Administrative Officer of the second Plaintiffs. Affidavit is marked "X" for identification and the same is taken on record. Alongwith affidavit, the learned counsel for the Plaintiffs has tendered on record six original documents alongwith a list. The original documents alongwith the list are marked "Y" (collectively) for identification and the same are taken on record.

2. The first Plaintiff is a public limited company and the second Plaintiff is an insurance company. The Defendants are a Shipping Company incorporated in

Netherlands and having management, control, possession and coverage of ship M.T.Falcon Chemist. The Defendants are carrying out business of carriage of goods by sea for consideration. According to the Plaintiffs, Defendants are carrying on business in Mumbai through their local agents M/s.Patavle (A division of Forbes Gokak Ltd). The Plaintiffs state that M/s.Wilmar Trading Pvt Ltd having office at Singapore sold to the first Plaintiff 1003.373 M.T. of Crude Palm stearine for a total sum of US $439,477.37 as per invoice dated 09th June, 1997. The said consignment was entrusted to the Defendants as owners and/or Charterers of the Steamship M.T.Falcon Chemist for its carriage and safe delivery from Port of Palembang (Indonesia) to Mumbai. The Defendants issued bill of lading dated 05th June, 1997 evidencing that l003.373 metric tones of Crude Palm Stearine was shipped in sound condition for its timely delivery at Mumbai port. The said M.T.Falcon Chemist arrived on 19th June, 1997 and berthed at No.9 Jetty End of Indira Dock, Mumbai. At the time of discharge, the Defendants delivered only 977.30 M.T. Crude Palm Stearine to the first Plaintiff resulting in short delivery of 25.843 M.T. A request was made by the first Plaintiff to the Defendants' agents to arrange for ship's survey as the Defendants' agents failed to arrange for a ship's survey, the first Plaintiff

appointed M/s.Seascan services as an independent surveyor to assess the loss and conduct detailed enquiry. The said surveyor submitted a detailed survey report dated 22nd July, 1997 and confirmed their delivery of quantity of 25.843 M.T.

3. The first Plaintiff lodged claim by letters dated 02nd July, 1997 and 30th December, 1997 with the Defendants' agent in Mumbai for the sum of Rs.04,08,220 being the loss suffered by the Plaintiffs due to short delivery. There was no response from the Defendants.

4. The first Plaintiff had insured the said consignment with the second Plaintiff under a valid policy of insurance. On the claim being lodged by the first Plaintiffs, the second Plaintiff paid sum of Rs.3,75,827/- to the first Plaintiff on account of loss caused to the first Plaintiff. The first Plaintiff executed on 15th May, 1998 a letter of subrogation as well as a special power of attorney authorising the second Plaintiff to recover from the Defendants the loss suffered by the first Plaintiffs. The suit is for recovery of the said amount of Rs.3,75,827/- together with interest thereof at the rate of 18 per cent per annum.

5. The invoice dated 19th June, 1997, the bill of lading dated 05th June, 1997 and survey report dated 22nd July, 1997 are duly proved by the affidavit of the said Mrs Madhuri Bhole. The letter of subrogation and the special power of attorney dated 15th May, 1998 executed by the first Plaintiff in favour of the second Plaintiff is also duly proved. The claim of the Plaintiffs in the suit has been duly proved by the said affidavit. There is no written statement filed by the Defendants.

6. Though a case is made out for passing decree in favour of the Plaintiffs, considering the facts and circumstances, the further interest will have to be fixed at the rate of 9 per cent per annum. Hence, there will be a decree in terms of prayer clauses (a) and (b) with a modification that the rate of interest will be 9 per cent per annum from the date of filing of the suit till realisation/payment of the amount.

7. The Plaintiffs will be entitled to refund of court fees, if any, as per rules. Certified copy is expedited.

JUDGE